**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE R.BASANT**

**SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929**

**CRL.REF.No. 16 of 2007**

**(CRIME NO. 227/1998 BY THE KOTTARAKKARA POLICE STATION)**
**(CP NO. 1/2004 OF JFCM-I, KOTTARAKKARA)**

**APPELLANT/ACCUSED:**

**REPORT OF ADDL.DISTRICT & SESSIONS JUDGE (ADHOC-III), KOLLAM.**

**BY**

**RESPONDENTS:**

**STATE OF KERALA.**

**BY PUBLIC PROSECUTOR SRI. S.U. NAZAR**

**THIS CRIMINAL REFERENCE HAVING COME UP FOR ADMISSION ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**R.BASANT, J.**

**----------**

Crl.Ref.No.16 of 2007

---

Dated this the 1st day of December 2007

**O R D E R**

This reference has been registered on the basis of a report dated 18/7/2007 received from the Additional District & Sessions Judge (Adhoc -III), Kollam through the Principal Sessions Judge, Kollam. Crime No.227/1998 was registered by the Kottarakkara police station against nine accused persons on the allegation that they had committed offences punishable under the Kerala Abkari Act. Final report has been filed and cognizance was taken by the learned Judicial First Class Magistrate Court-I, Kottarakkara. Committal proceedings C.P.343/2000 was registered. Accused 3 and 7 alone appeared before court and the case against them was committed before the court of Sessions. The same was taken on file as S.C.No.1553/03. Case against all the other accused was refiled before the learned Magistrate as C.P.No.338/03.

2. Thereafter accused No.5 appeared before the learned Magistrate and the case against him was committed to the court of Session. The same was numbered as S.C.No.616/2004 and the

case against the remaining accused was refiled as C.P.No.1/2004.

3. At that stage, the sixth accused appeared before the learned Magistrate and after complying with all the formalities the case against him was committed to the court of Session. But while passing the order of committal, erroneously it was recorded that both Accused 1 and 6 had appeared before the court and the case against them has been committed to the Court of Session. The case against the remaining accused was refiled as C.P.No.140/2004. The case against accused 1 and 6 was registered as S.C.No.1097/2004.

4. In the course of preliminary hearing in S.C.No.1097/04 it occurred to the learned Additional District & Sessions Judge (Adhoc -III), Kollam that the first accused had not appeared before the learned Magistrate and erroneously order of committal was passed describing that both accused 1 and 6 have been committed to the court of Session. The first accused had not appeared at all and only the sixth accused had appeared before the learned Magistrate. As the error cannot be corrected by the court of Session, the matter has been reported to this

court.

5. I am satisfied that necessary orders can be passed to reverse the error committed.

6. This criminal reference is hence answered. The order of committal on the basis of which S.C.No.1097/2004 is set aside in so far as it relates to the first accused. S.C.No.1097/2004 shall now continue so far as the sixth accused alone is concerned. The learned Magistrate shall make necessary corrections in the order of committal and shall proceed against the first accused also in C.P.No.140/2004. Compliance shall be reported to the learned Sessions Judge by the learned Magistrate. The learned Sessions Judge shall ensure that all necessary corrections are made out in all the relevant records at the Sessions Court and the Court of the learned Magistrate.

7. This Criminal Reference is accordingly answered.

**(R.BASANT, JUDGE)**

jsr

**R.BASANT, J.**

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007